

Steven M. Chabre, SBN 173271  
The Law Office of Steven M. Chabre  
1335 Park Avenue  
Alameda, CA 94501  
(510) 749-1440  
(510) 749-0466 (fax)

Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Plaintiff MARY VALLEJOS (“Ms. Vallejos”) and Defendants BECHTEL SHORT TERM DISABILITY PLAN (“the Plan”) and LIFE INSURANCE COMPANY OF NORTH AMERICA (“LINA”) hereby submit this Joint Case Management Conference Statement pursuant to F.R.Civ.P. 26(f) and the Court’s Order dated January 17, 2008.

## **1. Jurisdiction and Service of Process**

This is an ERISA claim for disability insurance benefits, and the Court has jurisdiction over it pursuant to 29 U.S.C. §1132(e). All parties have been served, and defendants have answered the Complaint.

## **JOINT CASE MANAGEMENT CONFERENCE STATEMENT (C 07-5363 SC)**

1           **2.       Facts**

2           Ms. Vallejos worked in various positions with Bechtel Corporation (“Bechtel”) for 36  
3 years. Her latest occupation with Bechtel was as a field services manger on an oil and gas  
4 project in Kuwait. By reason of her employment, Ms. Vallejos was insured under a group  
5 disability insurance policy issued by LINA. Ms. Vallejos stopped working December 14, 2006  
6 due to depression and anxiety. She filed a claim under the Plan with LINA in December 2006.  
7 LINA determined that Ms. Vallejos was not disabled as defined by the Plan and denied the  
8 claim. Ms. Vallejos appealed LINA’s decision, but LINA denied her appeal. Having exhausted  
9 her administrative remedies, Ms. Vallejos filed suit on October 19, 2007.

10           **3.       Legal Issues**

11           The legal issues involved in this case are the proper standard of review, the scope of the  
12 administrative record and plan documents, and the extent to which the parties may conduct  
13 discovery.

14           **4.       Motions**

15           The parties anticipate that one of them may file a motion to determine the proper standard  
16 of review. If the standard of review turns out to be abuse of discretion, then cross motions for  
17 summary judgment will likely be filed. Because of the parties’ differing views on the extent of  
18 discovery allowed in ERISA claims, there will likely be a motion related to discovery.

19           **5.       Amendment of the Pleadings**

20           No party currently anticipates amending its pleadings.

21           **6.       Evidence Preservation**

22           Plaintiff has no program for document destruction or erasing e-mails, voice mails, and  
23 other electronically recorded material. Defendants will produce the administrative record with its  
24 initial disclosures in advance of trial.

25           **7.       Initial Disclosures**

26           The parties will complete initial disclosures by February 7, 2008.

27           **JOINT CASE MANAGEMENT CONFERENCE STATEMENT (C 07-5363 SC)**

1           **8.       Discovery**

2           None of the parties has conducted discovery yet. As the parties cannot agree on the  
 3 scope of discovery appropriate in this matter, they have not completed a discovery plan.

4           **1. Plaintiff Contends**

5           Plaintiff contends that she is entitled to discovery to obtain all information contained in  
 6 the “administrative record” and “plan documents” related to this ERISA matter. 29 C.F.R. §  
 7 2560.503-1(h)(2); 29 U.S.C. § 1024(b)(4). In addition, defendants allege that they have  
 8 discretionary authority to interpret the Plan and to make factual determinations under the Plan.  
 9 Assuming that this is true, under Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 970-973  
 10 (9th Cir. 2006); Welch v. Metropolitan Life, 480 F.3d 942, 949-950 (9<sup>th</sup> Cir. 2007); and Saffon  
 11 v. Wells Fargo& Co. Long Term Disability Plan, \_\_ F.3d \_\_ (9<sup>th</sup> Cir. January 9, 2008), plaintiff  
 12 is entitled to discovery on whether defendants allowed their conflict of interest to affect their  
 13 decision to deny benefits. Plaintiff has a right to probe “the nature, extent, and effect on the  
 14 decision-making process of any conflict of interest.” Abatie, 458 F.3d at 970; see also, Medford  
 15 v. Met. Life Ins. Co., 244 F.Supp.2d 1120, 1128-1129 (Nev. 2003); Klund v. High Technology  
 16 Solutions, Inc., 417 F.Supp.2d 1155 (S.D. Cal. 2005). The more evidence plaintiff can put  
 17 forward of defendants’ self-interested behavior, the less deference the Court will afford  
 18 defendants’ decision. Abatie, 458 F.3d at 970; Saffon \_\_ F.3d at \_\_\_. Plaintiff’s discovery will  
 19 be closely tailored to the conflict issue and may include written requests for information and a  
 20 limited number of depositions of the individuals responsible for the decision to deny plaintiff’s  
 21 claim.

22           **1. Defendants Contend**

23           Defendants contend that discovery is not appropriate in ERISA matters and admissible  
 24 evidence is limited to the administrative record. While plaintiff contends she is free to conduct  
 25 discovery, plaintiff should be required to bring the appropriate motion for leave to do so.

26           **9.       Class Actions**

27           This is not a class action.

28           **JOINT CASE MANAGEMENT CONFERENCE STATEMENT (C 07-5363 SC)**

1           **10. Related Cases**

2           There are no related cases.

3           **11. Relief Sought**

4           Ms. Vallejos seeks reinstatement of the monthly disability insurance benefits she is owed  
5 under the Plan, including past-due benefits. The Plan documents define how the monthly benefit  
6 is calculated. She seeks interest on the past-due benefits. She seeks an award of attorney's fees,  
7 consistent with ERISA.

8           **12. Settlement and ADR**

9           Plaintiff prefers to go through Court-sponsored mediation and seek referral of the case to  
10 the ADR Department. Defendants prefer voluntary private mediation. The parties are meeting  
11 and conferring on the issue. There have been no settlement negotiations to date.

12           **13. Consent to Magistrate Judge**

13           Defendants did not consent to have a magistrate judge conduct all further proceedings  
14 including trial and entry of judgment.

15           **14. Other References**

16           The parties do not believe the case is suitable for reference to binding arbitration, a  
17 special master, or any other special procedure.

18           **15. Narrowing of Issues**

19           Depending on the state of the plan documents and the conduct of defendants' claims  
20 handling, as revealed by the administrative record and discovery, it may be possible for the  
21 parties to agree on the proper standard of review.

22           **16. Expedited Schedule**

23           This case should be streamlined. There will be no jury trial. Depending on the standard  
24 of review and the conduct of defendants' claims handling, the case may be decided entirely upon  
25 the administrative record either through cross motions for summary judgment or a trial on the  
26 papers.

27           **JOINT CASE MANAGEMENT CONFERENCE STATEMENT (C 07-5363 SC)**

17. The Parties propose the following case schedule:

- February 8, 2008, Initial Status Conference
  - June 9, 2008, Mediation Due
  - August 22, 2008 Discovery Cut-off
  - September 26, Dispositive Motions Due
  - December 15, 2008, Pre-trial Conference
  - January 26, 2009, Trial Date

## 18. Trial

The case will be tried to the Court and the parties anticipate a trial of one day.

#### **19. Disclosure of Non-party Interested Entities or Persons**

Plaintiff knows of no non-party on her side who has an interest in this litigation.

Defendants are unaware of any other interested parties at present.

20. Other Matters

None.

## THE LAW OFFICE OF STEVEN CHABRE

DATED: February 1, 2008

By: \_\_\_\_\_ /S/  
Steven Chabre  
Attorney for Plaintiff  
MARY VALLEJOS

## **JOINT CASE MANAGEMENT CONFERENCE STATEMENT (C 07-5363 SC)**

1 DATED: February 1, 2008

2  
3  
4  
5  
6 WILSON, ELSER, MOSKOWITZ  
7 EDELMAN, & DICKER LLP  
8  
9

10 BY: \_\_\_\_\_ /S/  
11  
12 Dennis Rhodes  
13 Attorneys for Defendants  
14 BECHTEL SHORT TERM DISABILITY  
15 PLAN and LIFE INSURANCE COMPANY  
16 OF NORTH AMERICA  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JOINT CASE MANAGEMENT CONFERENCE STATEMENT (C 07-5363 SC)**